IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2898 OF 2004

Mrs. Manisha Kaushik Kantharia. .. Petitioner.

vs.

State Govt. of Maharashtra & Ors.. Respondents

Shri S.S. Vaidya with Vikrant Deshpande for petitioner.

Shri R.D. Rane, Addl. G.P. for Respondent no.1.

Mrs. Daksha M. Shah for R. No. 3.

CORAM : A.P.SHAH, &

S.U.KAMDAR, JJ.

DATE : 13th September, 2004.

ORAL JUDGMENT : (Per S.U. Kamdar, J.)

1. The present petition is filed by a daughter of a deceased tenant in respect of a premises, namely 9, AB Dr. Bhalerao Marg, Girgaon, Mumbai - 400 004. The deceased Mahadev V. Devrukhkar was the original tenant in respect of the aforesaid premises which was in a dilapidated condition. On 26.5.1981, the Maharashtra Housing and Area Development Authority (hereinafter referred to as

MHADA) issued a vacation notice in the name of the tenant Mahadev V. Devrukhkar who was alive at that time. On 12.8.1983, an alternative accommodation in the transit camp was allotted to the original tenant in Gala No. 30/431 Colaba Bombay Transit Camp.

2. The original tenant along with the petitioner who was minor at that time shifted to the said transit camp. It is alleged that on 19.3.1984 the said original tenant executed an affidavit and on 16.11.1984 wrote a letter by which he has requested that his rights in the original tenancy as well the vacation notice which entitles him for re-possession of his reconstructed new tenement in lieu of his original tenement be transferred in favour of Satish D. Devrukhkar his nephew. The said original tenant and the father of the petitioner expired on 21-1-1985. On 26-12-1985 relying upon the aforesaid documents, the MHADA officer transferred the tenancy rights as well as vacation notice in favour of his nephew who is respondent no. 3 before us. On 19.11.1997, the Addl. Chief Officer of MHADA however informed the

said respondent no. 3 that there is no such provision to effect transfer of vacation notice from the name of the original tenant to the name of respondent no. 3. On 6.3.1998, the earlier order dated 26.12.1985 passed by the Dy. Chief Officer of MHADA was cancelled and the respondent no. 3 was directed to vacate the said Gala No.30/421 in the transit camp within a period of 7 days. On 25.3.1998, the respondent no. 3 preferred an appeal to the appellate authority. However,the appellate authority rejected the said appeal.

3. On 20.6.1998, the Estate Manager by his letter directed the 3rd respondent to vacate the premises within 7 days and hand over possession to Mahadev V. Devrukhkar failing which he will be forcibly evicted. On 20.1.2000, the respondent no. 3 challenged the said order by filing a writ petition in this Court being Writ Petition No. 139 of 2000. It seems that pending the said writ petition on 8.2.2000 the respondent no. 3 and his family members were evicted from the said Gala and possession was taken over. On 15.2.2000 when the writ petition came up for hearing before the

learned Single Judge, the learned Single Judge dismissed the writ petition holding that petition has become infructuous as he has already been evicted and possession is taken by the authorities. However, liberty was granted to file a fresh writ petition. The 3rd respondent accordingly filed fresh petition in 2000 which also came to be rejected by this Court.

4. It seems that inspite of the aforesaid rejection of the writ petition, the MHADA officers obviously in connivance with the 3rd respondent once again put him back in possession of the transit camp namely, 8/10 Mahavir Nagar Transit Camp, Kandivli, Mumbai. Thus, the 3rd respondent occupied the said premises and consequently the rights of the petitioner who is the only legal heir of the deceased being the daughter of the said petitioner who was minor at the relevant time and now became major were totally defeated. The effect of the aforesaid order putting him back in transit camp was that the petitioner who is entitled to the premises in the reconstructed premises, namely, at Girgaon, Mumbai would not be handed over possession

thereof and her rights will be defeated. It is because by reinducting the respondent no.3 in transit camp he has been made eligible for the premises in reconstructed building. In the aforesaid premises,the petitioner has filed the present writ petition in this Court.

5. We have heard the parties at length. We are quite surprised with the conduct of the officers of MHADA who have purportedly sought to transfer the tenancy as well as vacation notice in favour of the 3rd respondent by relying upon a so called affidavit dated 19.3.1984 and letter dated 16.11.1984 after the death of an original tenant.

6. In law, under s.5(11)(c) of Bombay Rent Act, 1947 which was in force at the relevant time, tenancy is inherited by the legal heir and representative who was residing at the time of death of the tenant i.e. on 21.1.1985. The petitioner was minor and was residing with the original tenant at that time. However, instead of transferring the tenancy in favour of the petitioner herein, the MHADA officers had thought

it fit to effect transfer in favour of respondent no.3 relying upon the so called affidavit dated 19.3.1984 and letter dated 16.11.1984. Under the provisions of MHADA Act there is no power conferred on the MHADA authorities to transfer the tenancy of any of the original tenant who was residing in the said tenements. The transfer of tenancy is beyond the jurisdiction of the authorities under the MHADA Act. Furthermore, the provisions of the vacation notice are found under sections 88 and 89 of the MHADA Act. On perusing the provisions of sections 88 and 89 of the said Act, we are satisfied that there is no such provisions to transfer the said vacation notice in favour of any third party which was originally issued to the original occupier of the premises of the said dilapidated building.

7. In the aforesaid circumstances, we are of the opinion that the action on the part of the authorities both of transferring the tenancy rights and/or transferring the vacation notice is wholly without jurisdiction, totally illegal and even malafide.

8. In the circumstances, we quash and set aside the order of MHADA authorities of transferring the tenancy and/or vacation notice in favour of respondent no. 3. We direct them to give the petitioner all rights pursuant to the tenancy and/or vacation notice issued in favour of the deceased tenant.

9. If there is any right in favour of respondent no. 3 by virtue of an affidavit dated 19.3.1984 and letter dated 16.11.1984 it will be open to respondent no. 3 to adopt appropriate legal proceedings in a competent court of law to establish his right. We direct that if the respondent initiates any such proceedings within 8 weeks from today, then in that event, the respondent no. 3 will be entitled to apply for necessary interim orders therein including protecting his possession in respect of transit camp at Mahavir Nagar, Kandivali, Mumbai which has been allotted by the authorities in his favour. If either the respondent no. 3 does not initiate any such civil proceedings within the aforesaid period or fails to obtain interim orders therein, then the

authorities will adopt appropriate proceedings for evicting the respondent no. 3 from the said premises in accordance with law.

10. We dispose of the aforesaid writ petition with the aforesaid directions. However, there shall be no order as to costs.

(A.P.SHAH, J.)

(S.U. KAMDAR, J.)